

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

September 26, 2000

ORDER (Part 2)

CONSUMERS MAINE WATER COMPANY-
MILLINOCKET
Proposed Rate Change (7.65% Increase in Revenue)

Docket No. 2000-96

CONSUMERS MAINE WATER COMPANY-
CAMDEN/ROCKLAND
Proposed Rate Change (5.88% Increase in Revenue)

Docket No. 2000-175

I. SUMMARY

We allow Consumers Maine Water Company's Millinocket Division to increase its rates by 4.31% and the Camden & Rockland Division by 2.62%. We find that the weighted average cost of capital for both divisions is 9.64%. We also address the rate making treatment of Camden & Rockland's investments associated with using Fish and Hobbs ponds as a water supply.

II. PROCEDURAL BACKGROUND

On January 3, 2000, Consumers Maine Water Company (CMWC) notified the Commission that it planned to file rate increase applications in the year 2000 for its Millinocket, Camden & Rockland, and Freeport Divisions, and possibly other divisions as needed. CMWC stated it would file individual cases for each division since each division's rates are set on a "stand-alone" basis.¹

On January 21, 2000, CMWC filed a request for waivers of certain provisions of 35-A M.R.S.A. § 307 and Chapter 120 of the Commission's rules. On February 15, 2000, the Commission issued an order waiving Section 307's bar on increasing annual operating revenues by more than 1% within a year from the previous increase. CMWC sought this waiver because the cumulative effect of the individual division rate

¹ In June 1992, CMWC received the opinion of the Commission's General Counsel that there appeared to be no legal or precedential bar to the filing of individual rate cases for independently tariffed water divisions within a multi-divisional single corporation water utility so long as sufficient information is provided regarding cost allocations from consolidated management, financing and capital structure, from which the Commission may determine just and reasonable rates. *Camden & Rockland Water Company and Maine Water Company, Request for General Counsel Opinion on Treatment of Rate Cases and Financings for Merged Companies*, Docket No. 92-141 (June 24, 1992).

increases² might be greater than 1%. The Commission also waived the requirement that CMWC notify the Commission 60 days in advance of a general rate increase (Chapter 120 § 6(B)) and the requirement for pre-filed testimony and exhibits (Chapter 120 § 6(C)).

CMWC filed its application for a 7.65% overall increase in rates (\$89,800) for the Millinocket Division on February 4, 2000. It filed its application for a 5.88% increase in rates (\$220,000) for the Camden & Rockland Division on February 29, 2000.

The Public Advocate intervened in both cases. In addition, the Towns of Camden and Rockport and the City of Rockland were granted intervenor status in the Camden & Rockland Division case.

At the request of the town manager of Millinocket, the Commission held a public witness hearing in Millinocket on April 26, 2000. Other than the town manager, no members of the public testified.

Discovery and technical conferences were held in both cases from March through May. On April 25, 2000, the Advisory Staff filed its Bench Analysis on cost of capital. The parties and advisors met in May to discuss settling the cases; no settlement was reached. Following these discussions, CMWC requested permission to submit pre-filed testimony on cost of capital. CMWC filed the testimony of Paula Ahern on June 1, 2000. A joint hearing in both dockets was held on July 18, 2000. The Public Advocate and CMWC submitted briefs in both dockets on August 3, 2000 and reply briefs on August 10, 2000. A Hearing Examiner's Report was issued on August 24, 2000. CMWC and the Public Advocate filed exceptions and the Commission deliberated these matters on September 11, 2000.

We issued an Order (Part 1) reflecting our decision on September 19, 2000. CMWC submitted rate schedules complying with that decision on September 20, 2000. This Order (Part 2) states the factual finding underlying our decision and approves the rate schedules filed on September 20, 2000.

III. DISPUTED ISSUES

This section addresses those issues in dispute that are unique to the Millinocket Division and the Camden & Rockland Division. It then addresses disputed issues that are common to both Divisions.

² The January 21 request indicated that CMWC also planned to file a rate increase in 2000 for the Kezar Falls Division, in addition to the three divisions mentioned above. In its exception to the Hearing Examiner's Report, CMWC states it now does not plan to file a rate case for Kezar Falls.

A. Millinocket

CMWC made three revenue requirement adjustments to its original filing (vehicle insurance, standby labor and overtime labor) to which all parties agree. These changes result in Millinocket now requesting an overall change in rates of 7.34% or \$86,153. One revenue requirement adjustment unique to Millinocket remains in dispute: capitalized labor.

CMWC proposes a capitalized labor percentage of 8.17% which is higher than actuals for 1998 and 1999 (6.49% and 6.81%, respectively). CMWC states that this amount reflects its anticipated level of capitalized labor for the rate effective period. It claims the \$19,500 proposed amount is consistent with the average capitalized labor for the previous four years.

The OPA recommends that the capitalized labor be calculated based upon 3 months of the year 2000 construction budget and 9 months of the year 2001 construction budget, in order to more accurately reflect the amount of construction dollars Millinocket will spend during the rate year. The construction budget for the year 2000 is \$127,859 and for year 2001 \$231,645. This would increase Millinocket's proposed amount to 10.29%. CMWC argues that the OPA's recommendation ignores historical experience, the rate year capital budget, and projected future capital budgets. CMWC points out that the OPA has offered no evidence to establish that there is a direct correlation between the size of the budget and the amount of capitalized labor. Furthermore, CMWC points out that much of the work related to the construction budget will be done by outside vendors, not Company personnel. In these instances, there would be limited labor costs incurred by Millinocket and therefore, limited amounts to capitalize.

The Hearing Examiner accepted CMWC's proposal, which is more in line with the average capitalized labor for the previous four years (1996 to 1999 = 8.7%). In its exception, the OPA continues to urge its position of 10.29%. In the alternative, OPA urged the Commission to use the 4-year average of 8.7%.

We will adopt the 4-year average of 8.7%. This is the same methodology CMWC agreed to for the Camden & Rockland Division and we do not see a justification for departing from that methodology.

B. Camden & Rockland Division

For the Camden & Rockland Division, CMWC agreed with the Public Advocate to use the average capitalized labor over the past four years of 10.08%. CMWC Brief at 19. This reduces the Camden & Rockland requested increase by \$18,275. It now requests an increase of \$201,463 or 5.39%. Three other adjustments unique to the Camden & Rockland Division remain in dispute. Two are related to the Fish and Hobbs ponds project. The third adjustment relates to bad debt expense.

1. Background Fish and Hobbs Ponds Project

CMWC seeks recovery of costs to build a transmission main from Fish and Hobbs ponds. It also seeks to recover costs associated with defending its right to take water from Fish and Hobbs ponds.

In considering these adjustments, it is useful to review the historical background of this project. CMWC initiated a project to build a new transmission main from Fish and Hobbs ponds in May of 1985. The mid-coast region was experiencing an extended drought and CMWC projected that the Division might be unable to meet water supply demand by late summer or early fall and would experience a water supply emergency. The former backup supply, Chickawaukkie Lake, could not be used due to poor water quality.

CMWC decided that the transmission main was the appropriate method of supplementing its available supply. CMWC filed plans and specifications with the Commission pursuant to Chapter 63 and received the advice (not the approval as indicated by CMWC) of the Director of Technical Analysis. The advice was, "The project appears adequate and necessary to serve the purposes of the Camden and Rockland Water Company." CMWC met with Town of Hope officials to discuss the project and filed applications with the Department of Environmental Protection, for the intake portion of the project, and the Department of Human Services for approval of Fish and Hobbs ponds as a source of public water supply.

CMWC began constructing the transmission main in June 1985, with the understanding that it had received permission from the appropriate Hope official. Pipeline construction was halted June 8 through June 10 to resolve questions about the road opening permit process. On June 17, 1985, 3,215 feet of the 4,002 feet of pipeline was complete. The balance of the pipeline involved an easement that was not executed until June 24, 1985. CMWC completed the installation of the final 787 feet of pipeline in the easement after the Hope Planning Board, on June 25, denied the building permit for the necessary pad on which to place a diesel pump. CMWC was confident that the Planning Board had made an arbitrary and erroneous decision. A Knox County Superior Court decision in October 1987 ordered the Town of Hope to issue a building permit for the pump pad.

CMWC continued discussions with DEP through the summer of 1985 about licensing the intake portion of the project. Concerns arose about the possibility of contamination from the nearby Union Chemical site, which had been proposed for inclusion on EPA's National Priorities List in April 1985. The DEP held a public hearing on the project in October 1985.

In July 1986, legislation was introduced to remove from Camden & Rockland's charter all water rights to Fish and Hobbs ponds. Agreement was reached to establish a study commission with representatives of all interests and the legislation was withdrawn. Meetings and additional studies took place through 1988.

In September 1988, the Legislature enacted an emergency moratorium on the withdrawal of water from Fish and Hobbs ponds until October 31, 1989. In May of 1989, new legislation was passed (P & S.L. 1989, ch. 49) placing a moratorium on the withdrawal of water from Fish and Hobbs ponds until a DEP-approved groundwater extraction and treatment system has been installed and is fully operational at the Union Chemical Hazardous Substance site and other safeguards are approved by the Board of Environmental Protection. The law also granted Camden & Rockland limited water rights to Megunticook Lake. Since that time, the transmission main has remained unused as the clean-up of the Hope site continues.

In addition to this recounting of events, it is useful to examine the regulatory treatment of these costs to date. In early 1987, the Commission adopted a rule to establish procedures for adjusting the rates of investor-owned public utilities to reflect the impact on their revenue requirements of the Tax Reform Act of 1986, recent decreases in cost of capital and other pertinent factors (Chapter 90). The rule resulted in abbreviated rate reviews initiated by the Commission for approximately 50 utilities. Camden & Rockland's review was completed in July 1987 and resulted in a stipulation providing for no rate change, but reflecting the fact that the pro forma rate base of \$4,592,779 included "new non-revenue producing transmission plant" added in 1987 (Camden & Rockland's previous rate case prior to this review was in 1982, Docket No. 82-126). No specific amount for this plant is stated, nor is there any commentary in the stipulation or the order as to its purpose. CMWC states that investment in Fish and Hobbs ponds totaling \$264,327 was allowed in rate base in Docket No. 87-117. It does not explain what expenses were included in this amount.

In June 1989, Camden & Rockland filed a proposed rate increase. In January 1990, the Commission approved a stipulation resolving the case. Paragraphs 6 and 7 of the Stipulation provided:

6. The parties agree that the capital costs for the transmission line to Hobbs and Fish Ponds will be removed from the 13-month average rate base and placed in a suspense account with accrual of reasonable carrying costs, until the plant is used or useful; provided, however, if the plant is not used or useful by January 1, 1994, the question of the appropriate treatment of the suspense account will be the subject of the Company's first rate case after that date, however commenced. Nothing in the Stipulation prevents any party from taking a position in a rate case after the present one for or against the Company's expenditures on the line.

7. The parties agree that the costs (\$198,838) associated with the Company's development and preservation of Hobbs and Fish Ponds as a source of supply will be treated as follows:

- A. \$21,010 associated with the acquisition of water right to Megunticook Lake will be rate based; and
- B. The remaining expenses (\$177,828) will be placed in the suspense account with the Hobbs and Fish Ponds Transmission Line (See Paragraph 6, above) and treated in the same manner.

Camden and Rockland Water Co., Proposed Increase in Rates, Docket No. 89-210 (Jan. 4, 1990).

On December 28, 1994, CMWC filed proposed rate increases for four divisions, including Camden & Rockland.³ This case also concluded with a stipulation approved by the Commission in May 1995. Once again, the parties agreed:

- 9. The Commission shall determine the appropriate treatment of the Fish and Hobbs Ponds capital costs suspense account no later than the end of Company's first rate case involving the Camden and Rockland Division commenced after June 1, 1997. The Company may accrue carrying costs on the suspense accounts, net of depreciation and deferred taxes, at the authorized rate of return for Consumers Maine Water Company. By this Stipulation, the parties take no position on whether such capital costs (and/or any accrued carrying costs thereon) should be recovered in future rates. All parties reserve the right to challenge the ratemaking treatment of the Fish and Hobbs Ponds capital costs on prudence or other grounds and the appropriateness of recovering in rates any accrued carrying costs on such capital costs.

Consumers Maine Water Co. Proposed Increase in Rates, Docket No. 94-358 (May 31, 1995).

The current case is the first since the 1995 stipulation. The stipulation deferred Commission determinations about recovery of these costs in rates and allowed carrying costs at the rate of Camden & Rockland's cost of capital. The original investment in the transmission main was \$231,691 (which

³ CMWC filed an earlier rate case in September 1993 that included the Camden & Rockland Division. Although that case was fully litigated and the final order issued in June 1994, the treatment of the suspense account was not addressed.

includes \$41,045 in legal fees). As of October 1999, carrying charges had added an additional \$299,309 to that amount. CMWC claims an investment of \$183,212 to obtain and maintain water rights with additional carrying charges of \$183,788.⁴

2. Fish and Hobbs Ponds Transmission Main

CMWC proposes to amortize the \$531,000 costs of the Fish and Hobbs ponds transmission main over its estimated 60-year remaining life. CMWC asserts that the costs were prudently incurred, the transmission main has value to its customers, and the amortization should be allowed. CMWC further states that it received Chapter 63 approval from the Commission's Director of Technical Analysis before commencing construction and that the main was not placed in service because of a legislative moratorium on the withdrawal of water from Fish and Hobbs ponds.

The OPA objects to the proposed amortization because the main is not in service. It also asserts that the transmission main has no value to the customers, as suggested by CMWC, because the legislative moratorium currently does not allow water to be withdrawn from Fish and Hobbs ponds even in an emergency. In its exceptions to the Hearing Examiner's Report, it suggests that the Commission wait three or four more years to determine recovery, after the DEP decides whether the Fish and Hobbs ponds can be used as a water source.

The Hearing Examiner recommended that we allow recovery of the costs, except for those costs incurred to complete the project after the Town of Hope denied permission to install the pump pad and local opposition to the withdrawals became known. This would allow recovery of 85% of the total costs.

The Fish and Hobbs ponds transmission main has never been in service and it has no current value to the Division's customers. While these factors are relevant in determining whether CMWC should be allowed to recover transmission main costs, they are not the only factors to be considered. We must also determine whether CMWC was prudent at the time it made its investment and whether there were factors beyond CMWC's control that kept the transmission main from being placed into service.

The transmission main is not in service because the Legislature enacted a moratorium on the withdrawal of water from Fish and Hobbs ponds. This action was, and remains, beyond the control of CMWC. CMWC was prudent, given the drought and potential for a water supply emergency, to initiate a project to supplement its available water supply. We will give CMWC the benefit of the doubt, in light of the circumstances, and accept that it was prudent to start construction before all the necessary permits/approvals were in hand.

⁴ By the time this case is decided, additional carrying charges will have accrued, however, CMWC has not asked for these additional amounts or requested permission to update its filing.

We therefore will allow recovery of \$531,000 over 60 years as requested by CMWC. We disagree with the Hearing Examiner that CMWC was imprudent in completing the main after it was denied the pad permit and local opposition had grown. We do not believe local opposition is a reason to conclude that a utility project is imprudent, assuming other aspects of the project planning and execution are reasonable. Here CMWC was faced with an emergency situation brought about by a drought. There is no evidence that CMWC proceeded in bad faith; a prudent utility should develop additional sources if faced with inadequate supply. With regard to denial of the permit, CMWC proceeded because it was convinced that the ruling was incorrect, and this judgment was supported when it ultimately prevailed in superior court. We also disagree with OPA's position of waiting until the DEP decides whether to lift the moratorium on using Fish and Hobbs ponds. There are no assurances anything will be decided in the next few years. These costs have already been deferred too long: the carrying charges have doubled the original costs. This matter should be settled now. We will allow CMWC to recover its prudently incurred costs.

3. Fish and Hobbs Ponds Water Rights

CMWC claims to have expended \$183,212 to defend its water rights to Fish and Hobbs ponds during 1988 and 1989. That amount, plus the carrying costs from 1990 through December 31, 1999, now total \$372,118, which CMWC proposes to capitalize and add to rate base. The Commission, in Docket No. 89-210, approved a Stipulation that allowed CMWC to capitalize \$21,000 of costs, associated with the Megunticook Lake water rights, and include it in rate base. CMWC asserts that it was prudent to defend its water rights to Fish and Hobbs ponds and that the customers should now support the costs of those rights. CMWC believes that the proposed treatment of the water rights costs is consistent with the treatment of similar costs for Megunticook Lake in Docket No. 89-210 and should be approved. The OPA did not object to the proposal to include the water rights to Fish and Hobbs ponds in rate base.

Typically, we have allowed expenses that are associated with new supply or plant to be capitalized along with the cost of the plant. This could include costs for acquiring land, easements, and associated legal expenses. Therefore, by analogy, costs incurred by a water utility to obtain legislative authority to a body of water could also be amortized along with the cost of the water plant associated with the body of water. Because the purpose of some of the expenses was unclear, the Hearing Examiner recommended recovery over 10 years, but without carrying costs. In CMWC's exceptions it urged the Commission to allow the entire amount of \$372,118 in rate base. In the alternative, it agreed the Commission could order the amortization over 10 years, but asked that the unamortized balance be included in rate base.

We find that the costs of the water rights to Fish and Hobbs ponds should be amortized over 10 years, with the unamortized balance in rate base. In the future, if CMWC incurs costs associated with obtaining water rights, it should request a

Commission accounting order if it wishes to defer any costs. We regret that both the water rights expenses and transmission plant expenses were deferred with carrying costs for such a long period of time. We discourage parties from agreeing to such open ended commitments in stipulations, and we will likely not approve such stipulations in the future.

4. Bad Debt Expense

CMWC proposes \$35,101 in bad debt expense. It uses a 3-year average for write-offs since this is the methodology adopted by the Commission in Docket No. 93-145 and has been applied in CWMC rate filings since that time. This amounts to an approximate 32.4% increase over test year expense.

The OPA argues that two of the three years (1997 & 1998) appear to be abnormally high. The OPA suggests the Commission calculate the average over a longer period of time, specifically six years, to reduce the effect of the two abnormally high years.

We agree with the OPA that a 6-year average should be used to reduce the effect of the two abnormally high years that are included in the 3-year average proposed by the Company. This is \$29,030. For water utilities, the Commission typically considers a bad debt expense of up to 0.50% (or 50 basis points) to be reasonable. (This would be approximately \$18,697 for Camden & Rockland.) We expect Camden & Rockland to justify any bad debt expenses in excess of this amount in any future rate cases.

C. Issues Common to Both Divisions

Three issues must be resolved that affect both divisions. These are rate case expenses, management service fees, and cost of capital.

1. Rate Case Expenses

In its filing, CMWC proposes an annual Company-wide rate case normalization expense of \$60,000. It then allocates the \$60,000 to all CMWC divisions according to the methodology it has used since Docket No. 93-145. That case involved all of its then affiliated companies/divisions. Using this method results in normalized regulatory expenses of \$8,538 for Millinocket and \$27,246 for Camden & Rockland.

The OPA objects to the CMWC proposed annual normalization and to the allocation of that normalization to all CMWC divisions. The OPA recommends that the Commission adopt a rate case normalization for each division that is based upon direct expenses for issues affecting only that division, plus an allocation of expenses for common issues among the four divisions that CMWC had indicated would be filing for increases this year (Millinocket, Camden & Rockland, Kezar Falls, and Freeport Divisions). Finally, the OPA recommends that the rate case expense allocated

to each division should be normalized over the average period of years between rate cases for that division. The OPA recommends a 5-year normalization period for the Millinocket Division and a 4-year normalization period for the Camden & Rockland Division.

We agree with the OPA's method for establishing a normalized amount by using the direct rate case expenses for each CMWC division plus a reasonable allocation of the costs of litigating common issues (common costs). It is generally reasonable to divide common costs among the divisions having a rate case in a given year. However, there are certain common costs that may be more equitably allocated on other bases. For example, it is more equitable to allocate the costs of litigating cost of capital among divisions on the basis of the rate base of each division rather than having a small division share those costs equally with the larger divisions. The allocation of common costs should be in proportion to the impact on (or benefit to) each division. No division should bear rate case expenses that only affect other divisions. In this case, we will establish a normalized amount as required by Chapter 85 of our Rules, by allocating the costs of litigating cost of capital based on each division's rate base as shown in Exhibit 1 to this Order. Other common costs will be shared equally.

The frequency of rate cases varies significantly for the CMWC divisions. This is readily shown in the Rate Case History and Timetable presented in the Brief of the Public Advocate. It is reasonable to establish a separate normalization period for each CMWC division, based on the historical time periods between cases and any current information provided by the utility concerning its expectations for future cases. This method is consistent with Chapter 85 and Commission practice. See *e.g.*, *Pine Tree Telephone & Telegraph Co. v. Public Utilities Commission*, 634 A2d 1302, 1304-1305 (Me. 1994).

In summary, the normalized rate case expense for each CMWC division will be the direct cost of that division's rate case, plus an allocation based on the rate base of each division filing a case within a year for the cost of capital issues, with remaining issues divided evenly among the other CMWC divisions filing rate cases within the year. We will use a normalization period of 4 years for both the Millinocket and Camden & Rockland Divisions. This results in annual regulatory expenses of \$12,375 for Camden & Rockland and of \$12,451 for Millinocket,

2. Management Service Fees

The OPA has proposed that the Commission assess a penalty of \$3,869 and \$11,951 for the Millinocket and Camden & Rockland divisions, respectively. The OPA determined the penalty by using 20% of the amounts in the 200 series of accounts (administrative and general expenses). This is to penalize CMWC for not documenting the review process to show that purchases from its parent were the best

alternative for Economies of Scale Services⁵ at the time the services were obtained as required by Section 2 of the Support Services contract approved by the Commission. In response to an OPA data request, CMWC provided only a narrative of what transpired and the resulting savings instead of copies of analyses and evaluations done at the time of the service request. The OPA states that since CMWC violated its contract, it should be penalized and this rate case is the appropriate place to assess the penalty.

CMWC argues that the OPA has misinterpreted the contract requirement to mean that such evaluations must be done annually. CMWC's own interpretation is that the review only need be done when it first contracts for a service. In addition, CMWC states that if it did not technically comply with the contract requirements, imposing a penalty would doubly penalize CMWC as it voluntarily included a management fee adjustment based upon the cluster analysis adopted by the Commission in Docket No. 93-145.

The question here is two-fold: first, did CMWC violate its Commission-approved contract by not maintaining and providing copies of documentation of the analysis done at the time of requesting service; and second, if so, should it be penalized for doing so? As explained further below, although CMWC may have acted inconsistently with the contract, penalties are not warranted.

We have addressed CMWC's contracts with its affiliates many times in the past. In Docket No. 94-352, we rejected CMWC's contract with its parent, Consumers Water. In denying approval of the proposed contract, we set forth general areas of concern that should be addressed by any subsequent contract for services between CMWC and its parent:

- C. Those "economy of scale" services received by Consumers Maine from Consumers Water should be clearly defined and should be based on documented economies of scale.

. . . .

- F. All services, including those provided by third parties, should be provided only at the request of the subsidiary . . . and there should be some form of concurrent documentation of requests for service maintained by the subsidiary.

Consumers Maine Water Company, Application for Approval of Affiliated Interest Contracts with Ohio Water Service Company, Docket No. 94-352 Order at 6 (July 6, 1995) (emphasis added).

⁵ The contract, approved in Docket 96-076, April 23, 1996, defined three broad categories of service between a utility and its affiliated parent. These were Services Required by Corporate Necessity; Economies of Scale Services; and Other Services not Clearly Better Performed by the Parent than by any Other Entity.

The contract filed and approved in Docket No. 96-076 between CMWC and its parent satisfied the Commission's concerns in these areas. The fact that CMWC, in response to the OPA's data request, provided no written documentation of the review done when entering into the service arrangements with its parents indicates that it has not met the requirements set forth in the Commission approved contract. Regarding CMWC's statement that the OPA misinterpreted⁶ the contract to require annual review, we agree that annual reviews are not necessary. This review should take place when contracts are executed or when extensions to these contracts are pursued. In a subsequent affiliated interest case we reminded CMWC:

Nevertheless, if Consumers Maine seeks to renew this contract again, it should provide some information establishing that it has determined that the contract continues to be in the best interest of ratepayers, consistent with the price comparison requirements contained in the guidelines set forth in the Commission's Order in Docket No. 94-352, dated July 6, 1995.

Consumers Maine Water Co., Approval of Affiliated Interest Transaction with Consumers New Jersey Water Co., Docket No. 97-974 (Feb. 25, 1998).

When CMWC recently renewed a contract with one of its affiliates, we stated:

We will approve this contract due to the small amount of dollars involved. Consumers Maine estimates its value at \$5,800. At this time, any additional price comparisons would likely be more costly than any savings. However, we expect Consumers Maine to be more straight-forward in fillings and simply state it has not done a price comparison if that is the case. A four-year-old bid without any additional analysis is not an adequate price comparison.

In the future, any requests for approval of contracts between affiliates should specifically address the seven items from Docket No. 94-352. If Consumers Maine believes that any of the requirements are inapplicable or unnecessary, because of the small size of a contract or for some reason, it should clearly say so.

Consumers Maine Water Co., Approval of Affiliated Interest Transaction with Consumers New Jersey Water Co., Docket No. 2000-54 (April 13, 2000).

⁶ On review of the record in this case, we cannot find a specific statement made by the OPA that it believed that the contract required annual review.

Clearly, the Commission has required CMWC to record the steps it takes to evaluate whether a contract is in the best interest of the ratepayers. This requirement is meaningless if CMWC does not maintain written documentation of those steps for future review by the Commission and other interested parties. We cannot judge whether CMWC's decisions were in the ratepayers' interest without reviewing the information reviewed by the Company in making its decision.

Therefore, we reiterate our requirement that CMWC evaluate each service request to its parent to ensure that such a contract is in the best interest of ratepayers. Documentation of such evaluations must be maintained in written form so that it can be subject to future review by outside third parties, such as the Commission and the OPA.

One further comment needs to be made. In its brief, CMWC states that the subjects covered by the specific Economies of Scale contract section are generally long-term in scope and in some cases, it does not make sense to reconsider such decisions. Specifically, the brief refers to Ms. Hayes's testimony at the hearing:

In some case, just using IS as an example again, once we make a decision to go on to central IS services, it's not a decision that you can undo or make sense to even reconsider.

While we would agree that it does not make sense to reconsider annually a decision involving a long-term contract, it does make sense to review it at reasonable intervals to ensure that the decision made over a year ago still makes sense in the current environment. We will not establish a specific time by which each ongoing contract must be reviewed, however, we expect CMWC to conduct reviews at reasonable intervals on an ongoing basis and to maintain written documents reflecting those reviews.

Although we have concluded that CMWC did not fully comply with its contract requirements by not maintaining documentation of its review process, penalties are not warranted at this time. However, we do not rule out the imposition of penalties for future violations. We expect CMWC to pay greater attention to affiliated interest transactions. CMWC should view itself as a purchasing agent acting on behalf of its ratepayers and aggressively seek the best purchase price for goods and services, not simply accept what is offered by its parent or other affiliates. CMWC is on notice that we will closely scrutinize these transactions in the future.

3. Cost of Capital

a. Overview

CMWC seeks the opportunity to earn an overall after-tax weighted average cost of capital (WACC) of 10.14% on its rate base. Company witnesses Judy Hayes and Pauline Ahern recommend that the ratemaking capital

structure for its Millinocket and Camden & Rockland divisions include a 49.70% common equity component and that the return on common equity (ROE) be set at 11.00%. CMWC did not specify the size of the flotation cost adjustment (if any) it is seeking in this case, but rather used 11.00% as an “all-in” recommendation.

In the Bench Analysis, Advisory Staff recommended that the appropriate after-tax WACC for the Company was 9.26% based on a 45.70% common equity component and a cost of common equity of 9.40%, inclusive of a 25 basis point allowance for flotation costs. The Advisor’s common equity ratio differed from the CMWC’s due to the inclusion of a short-term debt component in the capital structure not included by CMWC.⁷

The OPA did not sponsor a rate of return witness in this proceeding, however, in its Brief the OPA suggested that the Commission adopt the Bench Analysis cost of capital recommendation less the flotation cost adjustment. This results in a recommended cost of equity of 9.15%. Based on the statements on page 15 of the OPA’s Brief, we assume that the OPA also recommends the use of the capital structure proposed in the Bench Analysis, leading to an after-tax WACC of 9.14%.

For the reasons set forth below, we find that the appropriate after-tax WACC for the operating subsidiaries of Consumers Maine Water Company is 9.64%. This is based on a 10.00% cost of common equity, which includes a 15 basis point (0.15%) adjustment for flotation costs, and a 49.70% common equity ratio.

b. Background on Cost of Capital

While the allowed rate of return is generally referred to as the cost of capital, there is a distinction between the two concepts. Strictly speaking, the cost of capital is equal to the WACC, which is equal to the sum of the costs of the components of the Company’s capital structure after each component is weighted by its respective proportion to the utility’s total capitalization.

Judgment needs to be applied in arriving at the cost for each of the components of the capital structure. In particular, judgment is required to develop

⁷ In its exceptions, CMWC claims that by presenting a bench analysis on cost of capital issues the Advisors have become advocates and that the Examiner’s Report has been authored by a party advocating a position. We disagree. Both the Bench Analysis and the Hearing Examiner’s Report examined CMWC’s cost of capital position and testimony in the context of recent Commission precedents. The burden was on CMWC to show why those precedents were inapplicable. The fact that the Advisors persisted in articulating the flaws in the Company’s analysis, and continued to show results of analyses consistent with Commission precedent, does not convert them from Advisors to “Advocates.” In any case, CMWC had a full opportunity to dispute the Advisors’ analyses. The Advisors placed their analysis into the record and parties had an opportunity to examine and respond to the analysis, as permitted by 35-A M.R.S.A. § 1305(5).

a forward-looking estimate of the cost of common equity. Our analysis of the cost of capital, especially with respect to the cost of common equity, sometimes implies a degree of precision that is not really present. Nevertheless, we must set an exact cost rate for each of the components and for the overall cost of capital to the utility.

The allowed rate of return which is ultimately applied to the rate base may contain adjustments to the cost of capital that reflect management efficiency or other considerations related to the balancing of ratepayer and utility interests. The overall rate of return must strike a balance between the interests of ratepayers, who are entitled to the lowest reasonable cost of service, and the utility, which is entitled to a rate of return that allows it to attract capital at a reasonable cost.

This relationship between the cost of capital and the utility's fair rate of return has been established by several familiar United States Supreme Court decisions. *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 282 U.S. 679 (1923); *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944); and *Permian Basin Area Rate Case*, 390 U.S. 747 (1968). The *Hope* and *Bluefield* cases establish the general principles that the return to common equity owners should be commensurate with the returns on other investments having corresponding risks and should be sufficient to ensure confidence in the financial integrity of the enterprise in order to maintain its credit quality and its ability to attract capital. In *Permian Basin*, the Court tempered the strict reliance on the returns paid to investors with the acknowledgement that commissions must consider the "broad public interest" when making decisions on the utility's rate of return. *Id.* at 791.

The Maine Law Court has also required that the Commission consider the interests of ratepayers when setting the rate of return. For example, in *New England Telephone and Telegraph Company v. Public Utilities Commission*, 390 A.2d 8, 30-31 (Me. 1978), the Law Court held that ratepayers' interests must be given substantial weight in the final determination of a utility's allowed rate of return. In prior cases, we also have made cost-of-equity adjustments to account for utility inefficiency. We have generally used such adjustments when the effect of the inefficient behavior results from inaction rather than action. See e.g., *Bangor Hydro-Electric Company, Proposed Increase in Rates*, Docket No. 86-242, Order at 17-50 (Me. P.U.C., Dec. 22, 1987) (25 basis point reduction on equity because of management inefficiency in the credit and collection and conservation and demand-side management areas).

In this case, we have been presented with no evidence that would lead us to adjust the cost of capital for any of these concerns and thus, we will use the terms "cost of capital" and "rate of return" interchangeably.

c. Cost of Equity

1. CMWC Position

CMWC presented its position in two parts, the first of which was included in its initial filing. This was an informal analysis done by CMWC's president Judy Hayes, that recommended the 11.00% ROE and 10.14% WACC noted previously. In response to a data request, Ms. Hayes explained that she based her recommendation on a combination of factors including recently allowed ROEs for electric and water utilities in Maine, recently allowed ROEs around the country, the latest ROEs allowed for CMWC divisions and a risk premium methodology. Ms. Hayes noted that the Commission allowed 10.50%, 10.70% and 11.00% to CMP, Maine Public Service Company and Bangor Hydro-Electric Company respectively, in their most recent rate cases. She also noted that in 1999, the Commission allowed two unnamed water utilities 10.75% and 10.25%.⁸ Ms. Hayes pointed out that three divisions of CMWC were allowed 10.90% in June 1994, that four divisions were authorized 11.08% in June 1995 and that two divisions received 10.77% in August 1997. Finally Ms. Hayes mentioned that the Fed Funds Rate had increased by 100 basis points between June 1999 and March 2000 and that a sister company in Pennsylvania recently filed testimony before its state commission stating that an appropriate risk premium for water utility common equity was between 400 and 475 basis points over comparable water utility debt securities.

CMWC sponsored the testimony of an outside witness, Pauline Ahern, to corroborate the Company's request following the issuance of the Bench Analysis. Ms. Ahern testified that a reasonable cost of common equity for CMWC was between 11.70% and 12.40%, that CMWC's requested capital structure was reasonable and that the overall after-tax WACC would be between 10.49% (using an 11.70% ROE) and 10.84% (using the 12.40% ROE). CMWC did not adopt Ms. Ahern's recommended ROE, but rather offered her testimony to demonstrate the reasonableness of its original request for an 11.00% ROE.

Ms. Ahern based her 11.70% recommendation on a "multiple model analysis," in which she apparently assigned subjective weightings to each of four different methodologies. The results generated by each of her models were as follows: (1) an 11.40% estimate based on a Comparable Earnings approach using non-utility companies; (2) an 8.90% estimate based on a traditional Discounted Cash Flow (DCF) analysis on a sample group of water utilities; (3) a 12.20% estimate based on the average of two Capital Asset Pricing Model (CAPM) analyses (one

⁸ Examiner Hammond provided CMWC the most recent allowed ROEs in response to CMWC 01-06, which showed three years of ROE awards. This indicated that in 12/97, Small Point Water Company and Phillips Water Company were allowed 10.50% and 11.40%, respectively. In 6/98, Machias Water Company was allowed 10.00% and in 1/99 Bar Harbor Water Company was allowed 10.00%. None of these cases was litigated.

traditional CAPM and one "Empirical" CAPM) applied to the same group of water utilities; and (4) an 12.90% estimate based on a Historical Stock-Bond Risk Premium Model (RPM). Ms. Ahern noted that her methodologies caused her to conclude that 11.50% was the correct cost of equity for a water utility and due to the relatively small size of CMWC, she added a "small size" premium of 0.20% (after stating that a small size premium of 2.21% was appropriate) to arrive at 11.70%. Ms. Ahern never explicitly specified the weighting she assigned to each of her methodologies to reach 11.50%. While there are many possible weighting schemes that could yield 11.50%, a weighting of 20% to the DCF, with an equal 26.7% weighting ($20\%+26.7\%+26.7\%+26.7\%=100\%$) for each of the other 3 methodologies produces this number, while an equal weighting of all 4 methodologies produces 11.35%.

Ms. Ahern derived 12.40%, the top end of her recommended range, by using the quarterly DCF (QDCF) model on a peer group of water utilities in a manner similar to that used in the Bench Analysis. She stated that the reasonable QDCF range was 6.20% to 14.40% with a midpoint of 10.30%. Due to her contention that the small size of CMWC caused it to require a higher ROE, Ms. Ahern concluded that 12.40%, a number 210 basis points higher than the midpoint, was appropriate. We are uncertain as to how Ms. Ahern moved from a 10.30% midpoint to 12.40%, however in her data response she indicated that she chose the 3rd quartile point (the average of the midpoint (10.30%) and the high end (14.40%) of her range).

2. Bench Analysis

The Advisory Staff's Bench Analysis relied on the quarterly version of the DCF Model applied to a peer group of water utilities to arrive at a cost of equity of 9.40%. The Advisors also employed the traditional annual version of the DCF model and a CAPM model on the peer group as check methodologies. As an additional check, the Advisors applied all three models to a group of natural gas distribution ("LDCs") utilities.

For the water utility peer group, the quarterly DCF model produced an ROE range of roughly 7.35% to 11.00% (with an indicated midpoint of 9.15%) prior to an adjustment for flotation costs. The annual DCF model results suggested an overall range that was 5-10 basis points lower at roughly 7.30% to 10.90% (with an indicated midpoint of 9.10%) prior to a flotation cost adjustment. The CAPM analysis yielded ROE estimates from 9.15% to 10.25% (with an indicated midpoint of 9.70%) for the water utility peer group. The Bench's recommendation of a 25 basis point flotation cost allowance was based on its survey of electric utility common stock issuances between 1994 and 1998, which was used in the recently concluded electric utility "megacases." Including 25 basis points for flotation costs results in midpoints (rounded) of 9.40% using the quarterly DCF, 9.35% using the annual DCF midpoint, and 9.95% using the CAPM for the water utility peer groups.

The corresponding results for the natural gas LDC utility group were higher for the DCF models and generally similar for the CAPM model.

The quarterly DCF model produced an ROE range of roughly 10.55% to 12.00% (with an indicated midpoint of 11.30%) prior to an adjustment for flotation costs. The annual DCF model provided indications ranging 10-15 basis points lower than the quarterly DCF at roughly 10.45% to 11.85% (with an indicated midpoint of 11.15%) prior to a flotation cost adjustment. The CAPM yielded ROE estimates from 9.50% to 10.30% (with an indicated midpoint of 9.95%).

d. Comparable Sample Groups

1. Positions Before the Commission

Ms. Ahern employed a seven company proxy group in her DCF and CAPM analyses. She selected these companies because they: (1) are included in the water utility grouping of C.A. Turner's Public Utility Reports; (2) are included in S&P's Compustat database; (3) are assigned the water utility SIC Code by Compustat; (4) have actively traded common stock; (5) have long-term earnings growth estimates from I/B/E/S; and (6) are not operating in California. Ms. Ahern's comparable companies were American Water Works, Connecticut Water Services, E-town Corporation, Middlesex Water, Pennichuck Corporation, Philadelphia Suburban and United Water Resources.

The peer group in the Bench Analysis included all publicly traded water utilities that were paying common dividends that were identified in either the Standard or Expanded Editions of *Value Line* or that had I/B/E/S long-term earnings growth rates available. The Bench also removed companies that had announced merger agreements based on its opinion that share prices and long-term growth rates for companies are no longer suitable for study following a public merger announcement. The peer group included 6 companies, American States Water, Artesian Resources, Connecticut Water Services, Middlesex Water, Pennichuck Corporation and Philadelphia Suburban. The Bench Analysis specifically excluded three companies that were used in Ms. Ahern's peer group, American Water Works, E-town Corporation and United Water Resources due to their respective merger announcements.

2. Analysis & Conclusion

The Commission has in recent years consistently found that peer group analysis performs a very important role in setting the cost of capital, by eliminating or reducing the possibility of an anomalous result, which can occur when analyzing just a single company. The Commission has also agreed with the practice of removing from any peer group companies that are in the process of being acquired by or acquiring another company. Ms. Ahern's inclusion of three such companies in her seven-company peer group casts serious doubts upon any analyses based on that peer group. While it is possible to remove these three companies from Ms. Ahern's peer group, we would then be left with a four-company sample. We are satisfied that the Bench's six-company water utility peer group (which includes the four

companies that would remain after adjusting Ms. Ahern's peer group) provides us with an adequate basis to determine an appropriate cost of equity.

e. Discounted Cash Flow Analyses

1. Positions Before the Commission

Company witness Ahern used the annual version of the DCF model to develop a DCF estimate in her "multiple model analysis" (11.70% recommendation) and the quarterly DCF model to determine the top end of her range (12.40%). For the dividend yield component of her DCF models, Ms. Ahern used the average of a spot yield, a 3-month yield, a 6-month yield and a one-year yield for each company in the peer group. The average yield for the group was 3.6%. Ms. Ahern raised the dividend yield by a factor of one-half the dividend growth rate by multiplying it by $(1+0.5g\%)$ to arrive at a next-period aggregate peer group yield of 3.7%. Ms. Ahern examined several estimators to determine the dividend growth rates for her peer companies, including the consensus I/B/E/S forecasts, *Value Line* forecasts of earnings (eps) and dividends per share (dps), *Value Line* historical earnings and dividend data, and her own calculations of internal growth rates using the " $b \times r$ plus $s \times v$ " ($br+sv$) method. Ms. Ahern calculated her " $br+sv$ " growth rates using both historical and forecast inputs.

To calculate her forward looking " $b \times r$ " segment of the growth rate, Ms. Ahern relied on *Value Line* estimates of earnings retention rates (" b ") and return on equity (" r "). The " $s \times v$ " portion of this calculation also relies on *Value Line's* forecast of the growth in the number of shares expected between 1999 and 2005. To calculate her historical $br+sv$ growth rate, Ms. Ahern relied on the 5-year period 1995 to 1999 for each of the companies in her peer group. Ms. Ahern ultimately used aggregate peer group dividend growth rates of 5.4% and 4.7% in her annual DCF models leading to an annual DCF range of 8.40% to 9.10% with a midpoint of 8.80%.

In her QDCF analysis, Ms. Ahern uses the same dividend yield numbers as she used in her annual DCF analysis for each peer company, however she increased them to account for the quarterly payment of dividends. She then matched each company-specific growth rate with its dividend yield (i.e. Ct. Water Service "ROE" is the sum of Ct. Water Service's "yield" and Ct. Water Service's "growth" and not an aggregate rate) to determine the QDCF ROE range for the peer group. As previously noted, Ms. Ahern stated that the reasonable QDCF range was 6.20% to 14.40% with a midpoint of 10.30%. She then concluded that 12.40%, a number 210 basis points higher than the midpoint, was appropriate for CMWC, an upward adjustment she deemed appropriate to account for CMWC's relatively small size.

The Bench Analysis used a DCF analysis for the water utility peer group to estimate the cost of equity and placed greater weight on the results produced by the quarterly version of the DCF model. The results suggest that the QDCF cost of equity (including a 25 basis point flotation cost adjustment) ranges

between 7.60% and 11.25% for the water utility group while the annual DCF model produces estimates on the order of 5 to 10 basis points lower across the board. The preliminary DCF recommendation presented in the Bench Analysis was 9.40%, the midpoint of the QDCF range.

CMWC did not dispute the inputs to the Advisory Staff's quarterly or annual DCF models. As explained in the Bench Analysis, the DCF model requires a current share price, a current dividend, and an expected growth rate. For all the sample groups, the Bench Analysis used a recent 20-day average of closing stock prices (March 20, 2000 to April 18, 2000), the current indicated dividend raised by a factor of $(1+g\%)$ to arrive at a forward looking dividend amount D_1 , and the consensus 5-year I/B/E/S earnings growth rates for each company (from the March 2000 edition of the I/B/E/S Report).

2. Analysis & Conclusion

We find that the DCF analysis provided in the Bench Analysis provides a reasonable basis for determining CMWC's cost of common equity and we will rely on these results in our final analysis. As previously noted, with regard to comparable sample groups, we believe that the DCF results (both annual and quarterly versions) generated by Ms. Ahern's peer group are unreliable due to the inclusion of three companies, American Water Works, E-town Corporation and United Water Resources that are currently (and at the time Ms. Ahern collected her data) in the process of merging with other entities. The dividend yields and growth rates of these companies are potentially distorted by their pending mergers and these companies are therefore unsuitable for use in a DCF analysis. Companies that are involved in mergers generally see their share prices move in relation to their counter party because exchange ratios between the acquired and the acquirer are often specified in their merger agreements. The share price no longer fluctuates based on market conditions alone. Regarding growth rates, equity analysts often suspend their recommendations and stop estimating 5-year growth rates for companies while mergers are pending. The Commission has made its position known on this matter in the past. See Orders in Dockets 97-116, *Bangor Hydro-Electric Company, Proposed Rate Increase*, and 97-580 Phase I, *Central Maine Power, Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design*.

In addition to the above, there are two other weaknesses with Ms. Ahern's DCF analyses that would likely have caused us to discount her results significantly. First, in evaluating DCF models, we generally prefer to use forward-looking consensus growth rate estimates rather than those based on the opinion of a single analyst or those based on historical data. Ms. Ahern's growth rate estimates were heavily influenced by historical numbers and by her reliance on *Value Line* (which is a single analyst forecast and thus not a consensus forecast) for earnings and dividend growth estimates and as the source for calculating her forward-looking "(br) + (sv)" dividend growth rate. Schedule 13 of Ms. Ahern's Exhibit 1 (page1)

indicates that the historical growth rates and the single analyst (*Value Line*) growth rates used by Ms. Ahern are generally higher than the consensus projected growth rates. This introduces a systematic upward bias to all of Ms. Ahern's DCF analyses.

A second weakness we see in Ms. Ahern's DCF analyses concerns the use of a dividend yield that we believe to be too old to be useful. Theoretically the DCF analysis calls for the use of the current stock price, meaning the spot dividend yield. We understand that single day price swings can distort a DCF calculation and have therefore accepted the use of average stock prices in the past. In this case (and in others), the Bench has used a 20-day average (or 1-month average) share price to calculate its dividend yield. However, we disagree with the premise that 6-month and 1-year average dividend yields are good indicators of current investor sentiment regarding a given company. In our opinion, even a 3-month average yield is stretching the limit for our purposes. While we do not see that the use of these yields produces a bias one way or another in Ms. Ahern's DCF analyses, we believe that this renders her DCF calculations less useful to our decision. For all these reasons, we will focus our attention on the Bench's analysis rather than Ms. Ahern's.

f. Capital Asset Pricing Model

1. Positions Before the Commission

Company witness Ahern used the average of two versions of the CAPM model, a "Traditional" CAPM and the so-called "Empirical" or "Zero-Beta" CAPM, to arrive at her CAPM recommendation of 12.20%. The "Zero-Beta" CAPM differs from the traditional model in that it assumes a flatter security market line (or risk/return trade-off). This has the effect of predicting higher returns for stocks with betas of less than 1.0 and lower returns for stocks with betas greater than 1.0 than the traditional CAPM. Both models employed a risk free rate (R_f) of 6.00% based on a forecast of 30-Year Treasury Bond yields published in *Blue Chip Financial Forecasts* on May 1, 2000. The equity market risk premium (R_p) of 10.20% used by Ms. Ahern was based on the average of the historical Ibbotson & Sinquefeld series covering the years 1926 through 1999 (equal to 8.1%) and a forward-looking *Value Line* estimate (equal to 12.3%). Ms. Ahern used a *Value Line* beta of 0.55 in her CAPM analyses, which was the average beta for four companies in her sample group, American Water Works, E-town, Philadelphia Suburban, and United Water Resources as shown on Exhibit PMA-1, Schedule 15, page 2 of her Direct Testimony. She did not include *Value Line* betas for Connecticut Water Service (of 0.50) and Middlesex Water (of 0.45) in her analysis. Ms. Ahern's traditional CAPM yielded an ROE estimate of 11.60% while her "Empirical" CAPM yielded 12.80%. She averaged the two results to arrive at the 12.20% CAPM recommendation.

The Bench Analysis included a traditional CAPM analysis as a check methodology. Its CAPM employed a risk-free rate of 5.78% based on the then current (April 17, 2000) 30-Year Treasury Bond. In a departure from its usual practice of calculating a forward-looking market risk premium, the Bench Analysis

used the Ibbotson Associates (1926 to 1998) data to calculate the equity market risk premium of 7.48%, the difference between large company stocks and long-term U.S. T-Bonds. The beta estimates used by the Bench were those of the individual water companies included in its peer group and ranged from 0.45 to 0.60. The water utility CAPM results ranged from 9.15% to 10.25% (before flotation costs), with an average, median and midpoint of 9.70%.

The natural gas LDC betas, which the Bench Analysis used as an additional check mechanism, ranged from 0.50 to 0.60, and yielded a gas LDC range of 9.50% to 10.25% (before flotation costs). The average CAPM estimate for the gas LDCs was roughly 9.95%, with a midpoint and median of 9.90%. CMWC did not dispute these beta estimates or the use of a 30-year Treasury Bond as the appropriate risk free rate. CMWC, however, argued in its Brief that Staff erred in using the historical equity market risk premium rather than one that was forward-looking.

2. Analysis & Conclusion

As we have in the past, we find that the CAPM results provide a useful check on the DCF analysis. The theoretical weaknesses of the CAPM have been well documented in the Commission's recent decisions and we will not reiterate those here, nor will we discuss the basic structure of the model in this order.

We decline to give substantial weight to Ms. Ahern's CAPM analyses for several reasons. First, as we noted in CMP's last rate case, *Docket No. 97-580* (Phase I), we do not believe that the "Empirical" or "Zero-Beta" CAPM is an appropriate estimating tool where one uses "adjusted" beta statistics. *Value Line's* published common stock betas are already adjusted for what is known as "mean reversion," which is the tendency of raw historically calculated betas to move towards the market beta of 1.0. *Value Line's* adjustment for "mean-reversion" therefore moves raw betas (both those higher and lower than 1.0) towards 1.0. For utility betas, which are almost exclusively (and in this case) less than 1.0, this results in an upward adjustment to beta, which will automatically result in a higher ROE result as an output of the CAPM. The "Empirical" CAPM makes a similar mathematical adjustment, by moving low-beta stock returns upward towards the return of a stock with a beta of 1.0, or towards the "market" return. In essence, the adjustment for "mean reversion" is double-counted when one uses the "Empirical" CAPM and an "adjusted" beta, such as those published by *Value Line* or *Merrill Lynch*. Ms. Ahern's use of the "Empirical" CAPM produces an upward bias to her CAPM analysis, which is illustrated by the fact that her "Empirical" CAPM result is 12.80% and her traditional CAPM result is 11.60%, while all variables (risk-free rate, equity market premium, and beta) were held constant.

Second, we have concerns about both of the equity market risk premium estimates that Ms. Ahern used to arrive at her final 10.20% equity market risk premium. For the Ibbotson historical series, Ms. Ahern calculated the average 1926 to 1999 risk premium by using the average total return on Large Company Stocks (of 13.3%) and the average income return on Long-Term Government

Bonds (of 5.2%) to arrive at an 8.10% historical estimate. We believe that the correct historical risk premium should have been calculated as 7.80% by using the average total return on Long-Term Government Bonds of 5.5% rather than just the income return because the total returns on both indices include both income and capital appreciation (See data in Ibbotson 2000 Yearbook, page 33). Here, too, Ms. Ahern's CAPM analysis contains an upward bias since using a higher equity market risk premium will necessarily produce a higher ROE result in the CAPM. Although the Commission has consistently expressed a strong preference for a forward-looking equity market risk premium, we are unable to endorse the one provided by Ms. Ahern in this proceeding. Ms. Ahern also acknowledged that the estimated forward-looking market premium of 12.30% is based on a *Value Line* estimate, which is not a consensus assessment by the financial community, but is rather the opinion of a single investment house.

We have two other areas of concern regarding Ms. Ahern's CAPM analyses. We have generally used current treasury yields rather than forecasts as estimators of the risk-free rate. In instances where we have considered "forward-looking" treasury estimates, we have used treasury futures prices to calculate forward yields. We believe that, where possible, it is preferable to use a methodology where investors are "putting their money where their mouth is" when looking into the future. Finally, we have previously expressed our concern about using companies involved in mergers within the peer groups. Though the beta used in a CAPM may not be as sensitive to merger announcements as the DCF yield and growth inputs, it is possible that it could be distorted by the announcement. Ms. Ahern's CAPM peer group includes only four companies, three of which are affected by mergers. Removing the affected companies would leave us with a one-company "peer groups" a situation we would consider extremely unreliable.

For these reasons, we will use (as we have in the past) the Bench Analysis CAPM as a check on our DCF analysis. In the table below, we have used the 30-Year Treasury Rate, the beta range suggested by the Bench's peer group and the 7.50% (rounded from 7.48%) risk premium from the Bench Analysis. The 7.50% risk premium is from the period 1926-1998 from the *Ibbotson Associates 1999 Yearbook*. Since the Bench Analysis was written, the *Ibbotson Associates 2000 Yearbook* has been released, which takes the data series from 1926 to 1999. As noted above, the *2000 Yearbook* indicated that the equity market risk premium has increased to 7.80%, and we have added this number to the table below.

TABLE 1
CAPM Results

		R_p	R_p
<u>Beta (β)</u>	<u>R_f</u>	<u>7.50%</u>	<u>7.80%</u>
0.45	5.78%	9.16%	9.29%
0.50	5.78%	9.53%	9.68%
0.53	5.78%	9.72%	9.88%
0.60	5.78%	10.28%	10.46%

Note: Standard CAPM Formula = $R_f + \beta \times (R_p)$

As a check methodology, the above table indicates that the middle of the CAPM range (corresponding to a beta of 0.53) is roughly 9.70% to 9.90 prior to any adjustment for flotation costs. We note that betas in the upper end of the range seem to be more typical of the natural gas LDCs. Also, in the water utility peer group, the two smallest companies in terms of equity market capitalization, Connecticut Water Service and Middlesex Water have betas of 0.50 and 0.45 respectively. This may be an indicator that the lower end of the CAPM range of approximately 9.15% to 9.70% (midpoint of 9.40% before flotation costs) is more appropriate for relatively small water utilities.

g. Risk Premium Model

1. Positions Before the Commission

CMWC witness Hayes offered an informal historical risk premium analysis in this proceeding. Ms. Hayes noted that corporate bonds with Moody's ratings of Baa recently were yielding 8.3% and stated that a sister company in Pennsylvania filed recent testimony before its state commission stating that an appropriate risk premium for water utility common equities was between 400 and 475 basis points over comparable water utility debt securities. She used 400 basis points to arrive at 12.30% as an appropriate cost of equity indicator for water utilities.

Ms. Ahern offered the most comprehensive Historical Stock-Bond Risk Premium (RPM) analysis for the Commission's consideration in this proceeding. She used forecasts of AAA-rated bond yields from *Blue Chip Financial* as the starting point in her analysis. She then used one-year's worth of historical data to arrive at the conclusion that A-rated public utilities require a 60-basis-point premium over AAA-rated corporate bonds. This exercise results in a forward-looking yield of 8.10% for A-rated public utility bonds. She ultimately derived a 4.80% (the average of separate premiums of 5.00% and 4.60%) public utility equity risk premium to arrive at her final RPM recommendation of 12.90% (8.10% + 4.80%).

Ms. Ahern used *Ibbotson Associates* data from 1926 to 1999 to determine that the historical premium between large company stocks and corporate bonds was 7.4%. Ms. Ahern also calculated a forward-looking equity market risk premium by using a *Value Line* equity market return estimate of 18.3% after which she concluded that an appropriate equity market risk premium is 10.8%. She then took the average of the 7.4% historical premium and the 10.8% forward-looking premium, obtained 9.1% and multiplied it by the water utility average beta of 0.55 to arrive at her 5.00% water utility equity risk premium. Ms. Ahern's derivation of the 4.60% water utility equity risk premium was based completely on historical data. She used the returns on the Standard & Poor's Utility Index (SPUI) for the period 1928 to 1999 and a Salomon Brothers Bond Index (SBBI) of long-term high-grade (AAA and AA-rated) corporate bonds over the same period in her analysis. The SPUI showed an average return of 11.00% while the SBBI indicated an average return of 5.9%. Ms. Ahern reduced the size of the initially indicated 5.1% equity market risk premium by 50 basis points to

4.60% to account for the fact that A-rated public utility bonds would have a higher yield and thus require a smaller premium than the bonds included in the SBBI.

Although it was not offered as a formal methodology, in response to CMWC Data Request 01-03, the Advisors provided estimated ROEs for water utilities that had been used in each of the three major electric utility rate cases between June 1998 and June 1999. Relative to the 30-year Treasury Bond, the Bench Analysis recommends an ROE premium of roughly 338 basis points as compared to the premium range indicated in the electric proceedings of 225 to 316 basis points.

2. Analysis & Conclusion

As was the case in Docket Nos. 97-116 and 97-580 (Phase I), we again decline to consider Risk Premium Models. We believe that historical stock-bond premiums cannot reliably indicate investors' *current* expectations at any given time because risk premiums (both equity over debt, one grade of debt over another grade of debt, corporate debt over government securities) vary over time and with market conditions. Ms. Ahern acknowledges as much in her response to Advisor's Data Request 4-01, yet her premiums are derived primarily through historical analysis. She assumes that the spreads between equity securities and debt instruments, the yield spreads between corporate bonds and public utility bonds, and the yield spreads between AAA-rated and A-rated debt instruments are the same. We do not find at all convincing her argument regarding the assumption of a constant growth rate in the DCF model to be at all comparable to assuming that risk premiums are constant over time. Applying a consensus forward-looking growth rate to a current period share price is simply not the same as assuming that a "one-size fits all" historical premium is appropriate in all economic environments.

h. Comparable Earnings Model

1. Positions Before the Commission

Ms. Ahern offered the only Comparable Earnings analysis for our consideration in this case. To identify companies which she deemed comparable, Ms. Ahern screened the *Value Line* database for domestic non-utility companies that had a positive return of less than 20% on net worth, common equity or partner's capital for each of the five years 1995 through 1999 and also projected for 2003 to 2005 time period. She also screened for unadjusted historical betas (a measure of systematic or market risk) and historical residual standard errors (a measure of unsystematic or company-specific risk) and used these as the final criteria to select an 18-company sample. The companies that survived the screening process had an average adjusted beta of 0.64, an average unadjusted beta of 0.42 and an average Residual Standard Error of roughly 2.7. The comparable numbers for the water utility peer group Ms. Ahern used elsewhere in her analysis were 0.53, 0.24 and 2.7, respectively. Ms. Ahern then calculated both the median historical 5-year ROE and the median 5-year projected *Value Line* ROE for each of these companies. She

dropped the two highest and two lowest companies and found an 11.30% historical ROE and an 11.50% projected ROE. She concluded that the midpoint of these numbers, 11.40%, was appropriate for CMWC.

2. Analysis & Conclusion

The Commission has not relied on Comparable Earnings Models for many years and most recently rejected their use in CMP's Docket No. 97-580 (Phase I). We again decline to place any weight on that method here. First, we do not believe that historical accounting ROEs adequately reflect the future expectations of investors and we have not been presented with any evidence that suggest that they do. Second, *Value Line* projections of ROE (or any other variable) are not consensus projections made by "the market." They are the projections made by a single analyst or investment house. We cannot conclude that the expectations of a single analyst correctly capture investors' expectations for either of the sample group of companies that Ms. Ahern has chosen or for CMWC. Further, despite the fact that the historical Residual Standard Errors appear to produce near perfect matches between the sample group and the water utility group, the average adjusted beta for the non-utility group exceeds the water utility adjusted beta by more than 20%, while the average unadjusted beta for the non-utility group exceeds the water utility unadjusted beta by roughly 75%. This risk measurement indicates that the "Comparable Earnings" peer group has a significantly higher risk profile than that of the water utility peer group. Since the most fundamental premise in the investment world states that higher levels of risk require higher levels of return, we conclude that the expected ROE results generated by Ms. Ahern's Comparable Earning Model are biased upward. The group's beta estimates (unadjusted and adjusted) are much higher than those of the water utility peer group.

i. Issuance Costs

1. Positions Before the Commission

There was very little in the way of direct evidence regarding flotation costs presented by any party in this proceeding. The Bench Analysis referred to the evidence presented in Maine Public Service Company's recent rate case, Docket No. 98-577, *Investigation of Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design*, as justification for a 25 basis point (0.25%) flotation cost allowance. The Bench Analysis used the Maine Public Service allowance rather than the smaller allowances made for CMP and Bangor Hydro (15 and 20 basis points respectively) in order to capture the "small company effect" concerning equity issuances. Many of the expenses incurred in raising new common equity are fixed regardless of the size of the issuance and since smaller companies do smaller stock issuances, the relative costs on a percentage basis are higher for small firms.

CMWC's witnesses did not address flotation costs in detail in their testimony. However, in its Brief, CMWC supported the 25-basis-point

allowance and noted that it should be considered as being part of its 11.00% ROE request.⁹ The Public Advocate argued against the inclusion of any flotation cost adjustment in its Brief. According to the OPA, CMWC has more than recovered common equity flotation costs over the past 10 years and that it has no plans to issue common stock in the foreseeable future. In its Reply Brief, CMWC noted that while it would not raise common equity in the open market in the future, it would receive equity through its parent Philadelphia Suburban Corporation (PSC) and its parent would incur out-of-pocket costs associated with those share issuances. Furthermore, CMWC stated that its ratepayers would benefit from those issuances and therefore flotation costs should be allowed.

2. Analysis & Conclusion

We agree in principle with CMWC's argument regarding the inclusion of flotation costs for the reasons we articulated in CMP's recent rate case. Docket No. 97-580 Order (Phase I) at 56-57. We will adopt a flotation cost allowance of 15 basis points (0.15%). The Company pointed out in its Reply Brief that, to the extent that it will raise new common equity in the future, its parent company will do future common equity issuances, presumably in much larger offerings than it would do as a stand alone company. The 15 basis point adjustment is consistent with the Commission's decision in Docket No. 97-580 (Phase I); CMWC's parent, PSC, is similar in size in terms of equity market capitalization to CMP (currently \$975 million for PSC per Ahern Exhibit PMA-1, Schedule 13, page 11 versus CMP's \$957 million per CMP/Energy East merger press releases), and much larger than CMP was at the time the order in Docket No. 97-580 was issued (less than \$500 million).

j. Merger Considerations

In addition to the usual financial models analysts use in determining ROE there are several other subjective issues, related to the merger of Consumers Water Company (previous parent of CMWC) and Philadelphia Suburban Corporation in 1999, that must be considered. During the merger proceeding before the Commission, both the CMWC witness, Ms. Hayes, and the Philadelphia Suburban (PSC) witness, David P. Smeltzer, noted that one of the expected benefits from merging the two companies was that the larger corporation may be able access the capital markets on more favorable terms than either company could on its own. CMWC agreed in the stipulation resolving the merger case that:

- expected savings in capital costs and possible savings in reduced cost of capital will be flowed through to ratepayers on a division by division basis;

...

⁹ This effectively means that CMWC is requesting a 10.75% ROE, with a 25 basis point flotation cost allowance for a total all-in ROE of 11.00%.

- ratepayers will be held harmless for negative consequences to CMWC's cost of capital, cash flows, financial indicators and financing costs flowing from the merger.

Consumers Maine Water Company: Request for Approval of Reorganization Due to Merger With Philadelphia Suburban Corporation, Docket No. 98-648 Order at 5 (Jan. 12, 1999).

In this proceeding CMWC has stated that overall merger benefits have to date been relatively small, and that cost of capital benefits do not exist today. We are concerned by CMWC's statements in this proceeding suggesting that with CMWC currently being part of a larger entity, it is now competing with affiliates for capital investment dollars and that our decision with respect to ROE will lead to future under-investment or even disinvestments in the CMWC system by PSC. To the extent that these statements suggest that CMWC now requires higher allowed equity returns than it would have absent the merger, these statements appear to be directly contrary to representations made during the merger proceeding. We caution CMWC that tailoring testimony to the convenience of the moment is deeply troubling, and CMWC must expect increased scrutiny of, and skepticism regarding, similar claims (in either direction) here and in the future.

We further note that, if the Commission accepted CMWC's 11.00% ROE and 10.14% after-tax WACC, the effect of the merger (which has yet to generate cost of capital savings) might actually have been to increase the cost of capital for CMWC's ratepayers. The CMWC companies were allowed an 11.08% return on equity and an after-tax WACC of 10.08% in their last rate case, Docket No. 94-358. Order Approving Stipulation (May 31, 1995). While the ROE it now proposes is slightly lower, the after-tax WACC has increased. In the last fully litigated rate case, CMWC was allowed a 10.90% ROE and a 9.37% WACC. Docket No. 93-145, Order (July 12, 1994). While this appears to be nominally lower than CMWC's request in this case, this requires closer examination. If we consider the previous rate awards and the current CMWC request versus the then current 30-year Treasury Bond yields, it is obvious that cost of capital CMWC is requesting here is much higher today, after the merger, than it was before. The Federal Reserve's H.15 Statistical Release indicates that the average 30-year Treasury Bond yields for July 1994, May 1995 and for April 14, 2000 (Bench Analysis date), were 7.58%, 6.95% and 5.78% respectively (as of August 18, 2000 the H.15 reports the current 30-year Treasury yield as 5.71%). Based on the decision in Docket No. 93-145, the ROE premium was 332 basis points (10.90%-7.58%) while the WACC premium was 179 basis points (9.37%-7.58%) over the 30-year Treasury. In Docket No. 94-358, the ROE premium was 413 basis points (11.08%-6.95%) while the WACC premium was 313 basis points (10.08%-6.95%) over the 30-year Treasury. In this proceeding, where CMWC has supported the use of risk premium methodologies, it is requesting an ROE premium of 522 basis points (11.00%-5.78%) and a WACC premium of 436 basis points (11.00%-5.78%) basis points over the 30-year Treasury Bond. This request does appear to be at odds with the merger case representations.

k. Cost of Common Equity

We have stated our findings on capital structure and peer groups, and our preferences concerning the various financial models and flotation costs in the preceding sections, and we will not reiterate them. In this section we explain the rationale for our selection of 10.00% as the appropriate cost of equity and address CMWC's concern that our preference for the DCF necessarily results in an understated cost of equity.

In reaching our conclusion that 10.00% (including 15 basis points for flotation costs) is the appropriate ROE for the CMWC water utilities, we have chosen a point that is somewhat higher than the midpoint of the reasonable ROE range (9.30% including 15 basis points for flotation costs) suggested by the QDCF model. Doing so is consistent with several of our past decisions in which we concluded that market uncertainties have warranted such adjustments (See Orders in 97-116, 97-580, 97-596).¹⁰ In this particular decision, we have considered several qualitative factors that justify moving from the 9.30% midpoint to 10.00%. These factors are (1) the market-to-book ratios for the peer group used in the Bench Analysis are greater than 1.0; (2) the water utility peer group used in the Bench Analysis appears to have a somewhat higher credit rating than CMWC; (3) the water utility peer group is relatively small and the reasonable ROE range indicated within the group (365 basis points) is wide; (4) the CAPM used in the Bench Analysis shows a higher midpoint than the QDCF model (9.85% versus 9.30% including flotation cost); and (5) CMWC is generally well-managed and has been a contributor to the greater good in the water industry in Maine (e.g., by taking over and managing small troubled water utilities). We have not attempted to assign a particular value in basis points to any of the factors noted above, and would caution the parties against trying to do so in future rate cases. We simply state here that the above factors *in total* contributed to our decision to add 70 basis points to the suggested midpoint of the reasonable range suggested by the DCF model.

Of the qualitative factors noted above,¹¹ all but the first are self-explanatory and we will not elaborate on them further in this Order. We will, however, briefly address the first factor, namely the market-to-book ratio.

CMWC's witnesses stated that reliance on the DCF model understates the true cost of equity for companies whose market-to-book ratios exceed

¹⁰ In 97-116, we used the top of the reasonable range for BHE. In 97-580, we chose roughly the 3rd quartile point, effectively adding 35 basis points to the midpoint for CMP. In 97-596, we added 10 basis points for BHE primarily to account for economic conditions in the service territory.

¹¹ Another qualitative factor raised by CMWC is the so-called "small firm" effect on ROE. For reasons articulated in the Examiner's Report, we are satisfied that our selection of an ROE figure above the midpoint indicated by the QDCF model adequately captures any increased risk that CMWC may have due to its small size.

1.0. In today's stock market however, market-to-book ratios in excess of 1.0 are the rule and not the exception for nearly every segment of the stock market. Moreover, this is not a new situation in the utility industry. CMWC witness Ahern surveyed the C.A. *Turner Utility Reports* database back 15 years and did not find a period during which average market-to-book ratios were 1.0. This Commission has relied on the DCF during the past 15 years and has not made specific, quantified adjustments to DCF analyses to account for this during that time. We prefer the DCF model to other models because it is the one model that requires equity investors to "put their money where their mouths are," in that it requires the use of a current stock price. The traditional DCF formula, when solved for the current share price, illustrates that when other variables are held constant, a decrease in the discount rate, or expected ROE, leads to an increase in share price.

Traditional DCF Formula

$$P_0 = \frac{D_1}{r - g}$$

Where:

P_0	=	current share price
D_1	=	next period dividend
r	=	investors expected return (ROE)
g	=	investors expected dividend growth rate

Mathematically, if it is assumed that there is no change in the expected dividend amount, any change in "r" that is not completely offset by a change in "g," will result in an inverse change in the current price P_0 . If a company has a market-to-book ratio of 1.0 and something causes a decrease in "r," the investor's expected return, the current market price will increase and the firm's market-to-book ratio will immediately jump to a number higher than 1.0. Examiner Kivela stated at the hearing that between January 1995 and today, I/B/E/S consensus long-term earnings growth rates for the water industry have been relatively stable in the 3.0% range. CMWC cites acquisition activity in the industry as a factor that causes all water utility stock prices to rise in reaction, thereby artificially depressing the ROE results that are generated by DCF models. Since growth rates appear to be stable and dividends are directly measurable and not therefore controversial, it would appear that what is driving increases in water utility stock prices is that investors are using a lower discount rate, or lower required return on equity, to value this industry today.

While we recognize that the arithmetic application of the DCF-derived ROE to an original cost (i.e. book value) rate base may suggest that the DCF understates investors' requirements at market-to-book ratios above 1.0, we conclude that our selection of an ROE that is significantly above the QDCF-indicated midpoint is adequate to account for any downward bias that may exist in the DCF results. We therefore decline to make any further discrete adjustment for this factor

beyond the overall subjective adjustment we already made for all the qualitative factors combined. There is no reason to believe that investors have not already taken regulatory practice into account in valuing the stock. Stated another way, a high market-to-book ratio may be viewed as confirmation that investors require a lower return rather than a misunderstanding of how rates are set for rate base/rates of return companies.

I. Capital Structure & Weighted Average Cost of Capital

1. Positions Before the Commission

The weighted average cost of capital (WACC) is calculated by multiplying each proportional component of the capital structure by its corresponding cost rate. The sum of these products then equals the overall WACC. In this case the appropriate capital structure has been somewhat controversial. CMWC witness Hayes has proposed a rate year capital structure comprised of 49.7% Common Equity and 1.2% Preferred Equity, with the remaining 49.1% allocated to Long-Term Debt. The Bench Analysis proposed an alternate capital structure composed of 45.7% Common Equity, 1.2% Preferred Equity, and 4.0% Short Term Debt, with the remaining 49.1% in Long-Term Debt. CMWC's proposal was based on its actual capital structure as of December 31, 1999, adjusted for the special circumstances at its Bucksport and Hartland divisions.

The Bench Analysis surveyed the capital structures of the available publicly-traded water utilities in order to formulate its recommendation. The Bench Analysis included the average actual year-end capital structures for 14 water companies (including the *Value Line* universe water utilities plus several others) for 1997, 1998, and 1999.

2. Analysis & Conclusion

CMWC's request for a 49.7% common equity ratio, while slightly higher than industry "norms", is not outside a reasonable range based on the industry survey provided in the Bench Analysis. This is evident from Exhibit COC-2 of the Bench Analysis, which illustrates that industry-wide common equity ratios range from 35% to 62%, while the industry norm appears to be between 46% and 49%. We will adopt the capital structure proposed by the CMWC (after rounding) as shown in Table 2.

We have chosen not to include a short-term debt component in CMWC's capital structure at this time despite the fact that the evidence presented indicates that nearly all water utilities employ short-term debt. Our reasoning is two-fold. First, CMWC's proposed total debt ratio (sum of long-term and short-term debt) in this case is approximately 49.1%, which is fairly comparable to the industry's middle ground of roughly 50.0% to 53.0%. Secondly, to the extent that smaller firms may confront higher business risk than their larger counterparts, a lower debt ratio (and

thus a higher equity ratio) can offset an increase to total risk by reducing financial risk (because total risk equals the sum of business and financial risk).

Table 2
Overall Weighted Average Cost of Capital

Capital Component	Percent of Total	Cost Rate	Weighted Average Cost of Capital
Common Equity	49.7%	10.00%	4.97%
Preferred Equity	1.2%	5.08%	0.06%
Series (F) LT-Debt	10.0%	10.28%	1.03%
Series (G) LT-Debt	39.1%	9.16%	3.58%
Total	100.0%		9.64%

As shown in Table 2 above, we find that CMWC has an overall weighted average cost of capital of 9.64% using the Company's embedded cost rates and proposed capital structure and an "all-in" cost of common equity of 9.30%.

IV. CONCLUSION

The adjustments described above result in a total revenue increase for the Millinocket Division of \$50,593 or 4.31%. For the Camden & Rockland Division, the increase is 2.62% or \$97,814. We will allow these increases to be put into rates equally across all rate classes. The rate schedules filed by CMWC on September 20, 2000 in response to our Part 1 Order reflect these amounts and will be allowed effect on September 19, 2000, the date of our Part 1 Order.

Accordingly, we

O R D E R

1. That the Consumers Maine Water Company - Millinocket Division's Rate Schedules Pages 1, 2, 3, and 4 (All Fourth Revision) filed on September 20, 2000 are effective September 19, 2000; and
2. That the Consumers Maine Water Company - Camden & Rockland Division's Rate Schedules Pages 1, 2, 3, 4, 5, and 6 (All Fourth Revision) filed September 20, 2000 are effective September 19, 2000.

Dated at Augusta, Maine, this 26th day of September, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.